

UNITED STATES PATENT AND TRADEMARK OFFICE

**MAILED**

**FEB 04 2003**

**PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DAVID J. TIGHE  
and  
ANDREW D. WILLIAMS

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Application 09/582,760

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received at the Board of Patent Appeals and Interferences on January 29, 2003. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith returned to the examiner. The matters requiring attention prior to docketing are identified below.

On April 2, 2002, appellants filed a Notice of Appeal (Paper No. 10) and on June 3, 2002, filed an Appeal Brief (Paper No. 11). An Examiner's Answer (Paper No. 12) was mailed on August 12, 2002. On October 15, 2002, appellants filed a Request for Oral Hearing (Paper No. 13) and a Reply Brief (Paper No. 14).

In response, an examiner's Office communication was mailed on January 2, 2003 (Paper No. 15) which included a rebuttal of the position set forth in the Reply Brief.

On December 1, 1997, the rule pertaining to the Examiner's Answer and Reply Brief, 37 CFR § 1.193, was amended to read as follows:

§ 1.193 Examiner's answer and reply brief.

. . .

(b)(1) Appellant may file a reply brief to an examiner's answer within two months from the date of such examiner's answer. . . . The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief. A supplemental examiner's answer is not permitted, unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose.

(2) Where prosecution is reopened by the primary examiner after an appeal or reply brief has been filed, appellant must exercise one of the following two options to avoid abandonment of the application:

(i) File a reply under § 1.111, if the Office action is not final, or a reply under § 1.113, if the Office action is final; or

(ii) Request reinstatement of the appeal. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments,

Application No. 09/582,760

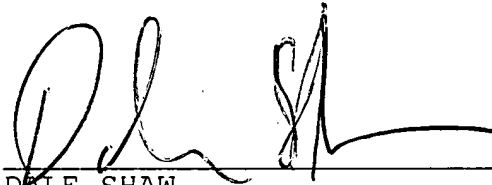
affidavits (§§ 1.130, 1.131 or 1.132) or other evidence are permitted.

In view of the changes to 37 CFR § 1.193(b)(1), the entry of the examiner's Office communication mailed January 2, 2003 (Paper No. 15), is inappropriate.

Accordingly, the application is returned to the examiner for proper response to the Reply Brief filed October 15, 2002 (Paper No. 14), and for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By:



DALE SHAW

Program and Resource Administrator  
(703) 308-9797

cc: Nixon & Vanderhye  
1100 North Glebe Road  
8th Floor  
Arlington, VA 22201-4714

ds/psb/dm  
RA030145